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**UNITED STATES DISTRICT COURT
DISTRICT OF UTAH
CENTRAL DIVISION**

WESTERN RANGELAND)	CASE NO. 2:14-cv-327-PMW
CONSERVATION ASSOCIATION,)	
<i>et al.</i> ,)	FEDERAL RESPONDENTS'
)	OPPOSITION TO PETITIONERS'
Petitioners,)	OPENING BRIEF [ECF No. 103]
)	
v.)	
)	
S.M.R. JEWELL, in her official)	
capacity as Secretary of the U.S.)	
Department of the Interior, <i>et al.</i> ,)	
)	
Federal Respondents,)	
)	
and)	
)	
AMERICAN WILD HORSE)	
PRESERVATION CAMPAIGN, <i>et al.</i> ,)	
)	
Defendant-Intervenor.)	
)	
)	

INTRODUCTION

Petitioners, Western Rangeland Conservation Association, *et al.*, challenge the Bureau of Land Management's (the Bureau) implementation of its Wild Horse Management Program as authorized by the Wild Free-Roaming Horses and Burros Act, 16 U.S.C. §§ 1331-1340 (Wild Horse Act).¹ *See* Petitioners' Opening Brief (Pet. Br.), ECF No. 103. The crux of Petitioners' case is that the Bureau has unreasonably delayed removing wild horses from nine specific areas of Federal public, State, and private lands. As explained in more detail below, Petitioners' assertions are inaccurate. First, the Bureau has no duty to remove horses on four of the nine areas of Federal public land at issue (Choke Cherry, Muddy Creek, North Hills, and Swasey herd management areas). Second, in the remaining five areas of Federal public land (Frisco, Blawn Wash, Four Mile, Bible Springs, and Sulphur herd management areas) and the State and private lands at issue, where it does currently have a duty to remove horses, the Bureau has diligently secured appropriated funds, conducted the necessary environmental reviews, scheduled removals, and removed wild horses when warranted. Petitioners are obviously dissatisfied with the Bureau's management priorities and removal schedules, but they cannot demonstrate that the agency has unreasonably delayed any action it was required to take. Therefore, the Court should reject Petitioners' invitation to judicially manage the Bureau's Wild Horse Program and deny their requested relief.

BACKGROUND

I. Statutory and Regulatory Background

A. Federal Land Policy and Management Act

The Bureau manages public lands pursuant to the Federal Land Policy and Management Act, 43 U.S.C. §§ 1701-1787, which directs the Secretary of the Interior,

¹ Pursuant to *Olenhouse v. Commodity Credit Corp.*, 42 F.3d 1560 (10th Cir. 1994), "[r]eviews of agency action in the district courts [under the Administrative Procedure Act] must be processed as appeals. In such circumstances the district court should govern itself by referring to the Federal Rules of Appellate Procedure." *Id.* at 1580.

1 acting through the Bureau, to “manage the public lands under principles of multiple use
 2 and sustained yield, in accordance with the land use plans” developed by the agency. 43
 3 U.S.C. § 1732(a). Multiple-use management is a “deceptively simple term that describes
 4 the enormously complicated task of striking a balance among the many competing uses to
 5 which land can be put, ‘including, but not limited to, recreation, range, timber, minerals,
 6 watershed, wildlife and fish[.]’” *Norton v. S. Utah Wilderness Alliance (SUWA)*, 542 U.S.
 7 55, 58 (2004) (quoting 43 U.S.C. § 1702(c)). While the statute requires the Bureau to
 8 follow multiple-use principles in general terms, it imposes few, if any, specific directions
 9 on how the agency allocates resources among competing uses. The Tenth Circuit thus has
 10 recognized that multiple-use statutes like the Federal Land Policy and Management Act
 11 are broad grants of discretion to agencies like the Bureau. *See Wyoming v. U.S. Dep’t of*
 12 *Agric.*, 661 F.3d 1209, 1268 (10th Cir. 2011).

13 **B. The Wild Free-Roaming Horses and Burros Act**

14 The Bureau’s multi-use management of Federal public lands under the Federal
 15 Land Policy and Management Act must also take into account the Bureau’s
 16 responsibilities under statutes like the Wild Horse Act. Enacted in 1971, Congress
 17 intended the Wild Horse Act to address concerns that wild horses were vanishing from
 18 the West, and to preserve them as “living symbols of the historic and pioneer spirit of the
 19 West.” 16 U.S.C. § 1331. But within a few years after the Act’s enactment, the situation
 20 had reversed itself “and action [was] needed to prevent a successful program from
 21 exceeding its goals and causing animal habitat destruction.” *Am. Horse Prot. Ass’n v.*
 22 *Watt*, 694 F.2d 1310, 1316 (D.C. Cir. 1982) (quoting H.R. Rep. No. 95-1122, 95th Cong.,
 23 2d Sess. 23 (1978)). As a result, Congress later amended the Wild Horse Act to provide
 24 the Bureau with greater authority and discretion to carry out the Wild Horse Act’s
 25 statutory mandate. *Id.*

26 There are two distinct obligations under the Wild Horse Act—one relating to
 27 federally managed lands, and one to private land—that are relevant here. With respect to
 28 Federal public lands, Section 3 of the Wild Horses Act grants the Bureau authority over

1 wild horses on Federal lands under its jurisdiction and directs the agency to protect and
 2 manage these animals “as components of the public lands” and “in a manner that is
 3 designed to achieve and maintain a thriving natural ecological balance” on those lands.
 4 16 U.S.C. § 1333(a); *see generally Wyoming v. U.S. Dep’t of Interior*, -- F.3d --, No. 15-
 5 8041, 2016 WL 5920744, at *1 (10th Cir. Oct. 11, 2016); *Fund for Animals v. U.S.*
 6 *Bureau of Land Mgmt.* The Bureau implements the Wild Horse Act by establishing
 7 localized herd management areas and generally through land-use planning under the
 8 Federal Land Policy and Management Act, setting appropriate management levels for the
 9 wild horse populations within each area. 16 U.S.C. §§ 1332(c), 1333(b)(1); 43 C.F.R. §§
 10 4710.1, 4710.3-1; *see also Wyoming*, 2016 WL 5920744, at *1. The Bureau typically
 11 defines a management range—bounded by a “low appropriate management level” and
 12 “high appropriate management level”—for each area that has wild horses. *Id.* at *2. In
 13 conjunction with a requirement that the Bureau maintain a current inventory of wild
 14 horses, the Wild Horse Act authorizes the Bureau to use a variety of methods to achieve
 15 appropriate management levels, including (but not limited to) the removal and destruction
 16 of “excess animals.” 16 U.S.C. § 1333(b)(1). As relevant, the Wild Horse Act defines
 17 “excess animals” as those “wild free-roaming horses or burros . . . which must be
 18 removed from an area in order to preserve and maintain a thriving natural ecological
 19 balance and multiple-use relationship in that area.” *Id.* § 1332(f).

20 Before the Bureau may remove wild horses from a given herd management area,
 21 the Wild Horse Act requires the Bureau to use current information to make two
 22 determinations: first, “an overpopulation exists on a given area of the public lands,” *id.* §
 23 1333(b)(2); and second, that instead of addressing overpopulation through options “such
 24 as sterilization, or natural controls on population levels,” *id.* § 1333(b)(1), “that action is
 25 necessary to remove excess animals,” *id.* § 1333(b)(2); *see also Wyoming*, 2016 WL
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1 5920744, at *4-5.² Once the Bureau makes these determinations, the Wild Horse Act
 2 provides that the Bureau “shall immediately remove excess animals from the range so as
 3 to achieve appropriate management levels.” 16 U.S.C. § 1333(b)(2). The Wild Horse Act
 4 establishes an order of priorities when removing excess horses but does not establish a
 5 specific statutory deadline for the completion of any particular removal action. *Id.*

6 With respect to private land, the Bureau’s obligations are different. Under Section
 7 4 of the Act, 16 U.S.C. § 1334, if wild horses “stray from public lands onto privately
 8 owned land, the owners of such land may inform the nearest Federal marshal or agent of
 9 the Secretary, who shall arrange to have the animals removed.” The Bureau has
 10 interpreted this statutory provision by promulgating implementing regulations, which
 11 provide: “Upon written request from the private landowner to any representative of the
 12 Bureau of Land Management, the authorized officer shall remove stray wild horses and
 13 burros from private lands as soon as practicable.” 43 CFR § 4720.2-1. Unlike Section 3,
 14 Section 4 of the Act does not require the Bureau to determine that an overpopulation
 15 exists or that action is necessary to remove stray horses before initiating a removal action.

16 Congress has provided the Bureau with significant discretion as to how it manages
 17 wild horses. *See, e.g., Am. Horse Prot. Ass’n v. Frizzell*, 403 F. Supp. 1206, 1217 (D.
 18 Nev. 1975). In short, the Bureau, in its expert capacity as the federal agency in charge of
 19 implementing the Wild Horse Act, is entitled to deference in deciding the timing, pace,
 20 and methods of removing wild horses from the range. *Am. Horse Prot. Ass’n*, 694 F.2d at
 21 1318.

22 **II. Factual Background**

23 **A. Current Horse Population Numbers**

24 Currently, there is an estimated population of 67,000 wild horses and burros on
 25 Federal public, State, and private lands spread throughout 10 western states (this estimate
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27 ² These excess and removal determinations most often occur as part of the Bureau’s
 28 environmental review process mandated by the National Environmental Policy Act, 42
 U.S.C. § 4321 *et seq.*

1 does not include the 2016 population increase or foal crop of 15-20%). ECF No. 115-2 at
 2 14 (Exh. 2 to State of Utah’s Amicus Brief). This total is more than twice the number of
 3 horses on the open range recommended by the relevant Bureau land use plans. *Id.* And,
 4 due to rapid reproduction rates, horse population numbers double approximately every
 5 four years. *See* AR015799; AR015211.³

6 **B. Challenges Facing Wild Horse Management and Removal Efforts**

7 Although the Wild Horse Act’s management direction to the Bureau appears
 8 straightforward, reality introduces significant complexity into the management equation.
 9 This is especially the case with respect to the Bureau’s ability to remove additional horses
 10 from the western range.

11 The Bureau’s ability to remove additional horses from the open range is primarily
 12 limited by the current budget expenditures and lack of capacity associated with boarding
 13 already removed horses at off-range facilities. Over the past two decades, the Bureau has
 14 removed over 165,000 wild horses from the open range and now pays to board
 15 approximately 50,000 of these horses at off-range facilities. Due to the decrease in
 16 market demand for horses in general, *see* AR010674-89; ECF No. 115-2 at 5, the Bureau
 17 is increasingly unable to find suitable homes for healthy excess horses through its
 18 adoption program. And, to further complicate this problem, the Bureau is not permitted to
 19 humanely destroy healthy, unadopted horses or conduct any sale that results in their
 20 destruction. AR015213; *see also* Consolidated and Further Continuing Appropriations
 21 Act, 2015, Pub. L. 113-235, 128 Stat. 2130, 2399 (Dec. 16, 2014) (“Appropriations
 22 herein made shall not be available for the destruction of healthy, unadopted, wild horses
 23 and burros in the care of the Bureau or its contractors or for the sale of wild horses and
 24 burros that results in their destruction for processing into commercial products.”); *In Def.*
 25 *of Animals v. U.S. Dep’t of Interior*, 751 F.3d 1054, 1059 n.3 (9th Cir. 2014). This means
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 28 ³ References to “AR#####” refer to the bates-stamp numbering in the lower-right corner
 of each page in the administrative record.

1 that the Bureau must pay these boarding expenses over the entire lifetime of the vast
 2 majority of these horses, at a staggering and escalating cost. ECF No. 115-2 at 2 (“Costs
 3 for lifetime care in a corral approaches \$50,000 per horse. With nearly 50,000 horses and
 4 burros already in off-range corrals and pastures, this means that without new
 5 opportunities for placing these animals with responsible owners, the [Bureau] will spend
 6 more than a billion dollars to care for and feed [those animals currently in holding] over
 7 the remainder of their lives.”). As a result, much of the Bureau’s horse-management
 8 budget is now fixed and committed to off-range boarding costs. AR015213 (explaining
 9 that boarding costs consumed approximately 60% of the Bureau’s Horse Management
 10 budget in 2012); AR015799 (explaining that boarding costs consumed approximately
 11 74% of the Bureau’s Horse Management budget in 2008).

12 The Bureau’s ability to remove additional horses from the open range is also
 13 limited by the lack of boarding space at off-range facilities. Many of the current boarding
 14 facilities are at or near maximum capacity. *See* Victor August Warr Declaration (Warr
 15 Decl.) at ¶¶ 9-12.⁴ Furthermore, procuring additional off-range facilities is a difficult and
 16 long process. *Id.* Relatively few facilities meet the Bureau’s quality-control standards
 17 and, of the facilities that meet the appropriate standards, the Bureau is often at a bidding
 18 disadvantage due to the abilities of cattle companies to pay a higher price. *Id.* Also, if the
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20 ⁴ Generally, review of final agency action is limited to the record directly or indirectly
 21 before the agency at the time a final decision was made. But this case does not involve
 22 final agency action; rather, this case involves the Bureau’s alleged failure to act and
 23 continuing failure to act. In these types of cases, the Tenth Circuit has recognized several
 24 exceptions to the Administrative Procedure Act’s limitation that courts should restrict
 25 review of agency action to the administrative record. *Am. Mining Cong. v. Thomas*, 772
 26 F.2d 617, 626 (10th Cir. 1985); *see also Custer Cty. Action Ass’n v. Garvey*, 256 F.3d
 27 1024, 1027 n.1 (10th Cir. 2001). Two of these exceptions are relevant here: Courts have
 28 allowed consideration of extra-record materials when: (1) “agency action is not
 adequately explained and cannot be reviewed properly without considering the cited
 materials . . .”; and (2) “evidence [has] com[e] into existence after the agency acted
 demonstrates that the actions were right or wrong . . .” *Am. Mining Cong.*, 772 F.2d at
 626 (citations omitted). For these reasons, the Court’s consideration of the Bureau’s
 declaration is appropriate.

1 Bureau is able to secure additional space, it takes about two years to finalize the
2 procurement process. *Id.*

3 As a result of the significant boarding costs and the lack of boarding space at off-
4 range facilities, the Bureau only removes approximately 3,500 horses a year from the
5 open range throughout the West. ECF No. 115-2 at 2. This rate is generally equivalent to
6 the number of horses that annually leave the Bureau's off-range facilities by sale,
7 adoption, or death. *Id.* This average yearly removal of horses from the western range is
8 allocated among all 10 western states according to the most pressing and urgent needs at
9 any given time. ECF No. 115-2 at 4, Table 1.

10 **C. Efforts to Bring the Bureau's Wild Horse Program onto a Sustainable** 11 **Path**

12 Due to these well-documented difficulties in managing wild horses, strategies for
13 managing horse populations are at the forefront of discussion. *See, e.g.*, AR015185. After
14 covering boarding costs, the Bureau has chosen to focus its remaining wild horse-related
15 budget on efforts it feels will most effectively bring its Wild Horse Program onto a
16 fiscally and ecologically sustainable path: (1) the Bureau has recently sponsored a
17 significant research program focused on developing an effective, easily delivered, long-
18 lasting, and affordable fertility control; (2) the Bureau has started transitioning horses
19 from off-range corrals to more cost-effective pastures; (3) the Bureau has worked to
20 increase and incentivize adoptions with new programs and partnerships; and (4) the
21 Bureau has requested legislative authority to allow for the immediate transfer of horses to
22 other agencies that have a need for work animals. ECF No. 115-2 at 2-3. Not only are
23 these efforts designed to free up funding and boarding space for more removal efforts,
24 they also aim to significantly reduce the need for removal efforts. Once it has addressed
25 these top priorities, the Bureau surveys the removal needs among all 10 western states
26 and removes horses from the most problematic areas.

27 **D. The Bureau's Removal Efforts In Utah On Public Land**

28 **1. Removal Decisions and Efforts from 2004-2014**

There are nine herd management areas largely on Federal public lands at issue in this case – Frisco, Blawn Wash, Four-Mile, Bible Springs, Sulphur, Choke Cherry, Muddy Creek, North Hills, and Swasey. Each herd management area also contains some portion of private and State of Utah lands. Warr Decl. ¶¶14-16. As demonstrated by the table below, from 2004 to April 2014, after analyzing the horse-removal needs across all 10 western states, the Bureau completed the required analyses under the Wild Horse Act and the National Environmental Policy Act and conducted the approved removals in each of these herd management areas. Also, as noted below, these removals from these areas also resulted in removals from private and State lands in differing degrees. *Id.*

Herd Management Area (% Private/State Land)	Excess / Removal Determination Date	Record Cite For Decision Document	Completed Gather Date / Number of Removals	Record Cite For Removal Numbers
Frisco (19%)	Signed Oct. 2012	AR001477	Nov. 2012 114 horses removed	AR003195
Frisco (19%)	Signed Aug. 2005	AR001464	Aug. 2006 36 horses removed	AR003190
Blawn Wash (43%)	Signed June 2009	AR000783	July 2009 139 horses removed	AR003187
Blawn Wash (43%)	Signed April 2005	AR001359	July 2007 40 horses removed	AR003178
Blawn Wash (43%)	Signed Oct. 2005	AR000898	Oct. 2005 112 horses removed	AR003184
Four-Mile (14%)	Signed June 2009	AR000783	July 2009 88 horses removed	AR003187
Four-Mile (14%)	Signed Oct. 2005	AR000898	Oct. 2005 30 horses removed	AR003184
Bible Springs (9%)	Signed June 2009	AR000783	July 2009 116 horses removed	AR003187
Bible Springs (9%)	Signed Oct. 2005	AR000898	Oct. 2005 46 horses removed	AR003184
Sulphur (13%)	Signed Nov. 2008	AR001984	Dec. 2010 30 horses removed	AR003224
Sulphur (13%)	Signed Nov. 2008	AR001983	Nov. 2008 333 horses removed	AR003232
Sulphur (13%)	Signed June 2006	AR002125	July 2006 186 horses removed	AR003221

Choke Cherry (17%)	Signed Oct. 2010	AR016150	Jan. 2011 57 horses removed	AR016231
Muddy Creek (5%)	Signed July 2009	AR011005	July 2009 87 horses removed	AR011123
Muddy Creek (Sinbad Horses)	Signed July 2008	AR011073	July 2008 54 horses removed	AR011122
North Hills (17%)	Signed Nov. 2010	AR001742	Dec. 2010 97 horses removed	AR003206
North Hills (17%)	Signed July 2007	AR001920	July 2007 88 horses removed	AR003178
North Hills (17%)	Signed Jan. 2012	AR001818	Sept. 2005 18 horses removed	AR003209
Swasey (5%)	Signed Dec. 2012	AR016233	Feb. 2013 160 horses removed	AR010637

The removal actions contemplated by and analyzed in each decision document listed above are now complete. In other words, for the Bureau to remove any additional horses in any of these herd management areas, it must conduct some sort of additional environmental review under the National Environmental Policy Act and make the required removal determinations under Section 3 of the Wild Horse Act. *See, e.g.,* Warr Decl. ¶¶ 21-22.

2. Post-2014 Removal Decisions and Efforts

At the time of Petitioners' complaint, filed in April 2014, there was only one operative and current removal determination out of the nine herd management areas at issue. *See* AR001477 (Frisco herd management area).⁵ Since the time of Petitioners' complaint, however, the Bureau has made overpopulation and removal determinations for an additional four herd management areas (Blawn Wash, Four-Mile, Bible Springs, and Sulphur). The Bureau has initiated removal efforts pursuant to those determinations in all five herd management areas:

⁵ This was the Bureau's first phased-in environmental assessment and removal decision in Utah that contemplated and analyzed multiple removals over a 6-10 year period.

Herd Management Area (% Private/State Land)	Excess / Removal Determination Date	Cite For Decision Documents	Completed Gather Date / Number of Removals	Cite For Removal Numbers	Planned Future Gather Date
Frisco (19%)	Signed May 2016	Exh. B to Warr Decl.	July 2016 113 horses removed	Exh. C to Warr Decl.	January 2017
Blawn Wash (43%)	Signed June 2014	AR001350	Aug. 2016 158 horses removed	Exh. D to Warr Decl.	January 2018
Blawn Wash (43%)	Signed June 2014	AR001350	Aug. 2014 143 horses removed	AR003181	January 2018
Four-Mile (14%)	Signed June 2014	AR001350	N/A	N/A	July 2017
Bible Springs (9%)	Signed June 2014	AR001350	Sept. 2014 39 horses removed	AR016259	July 2017
Sulphur (15%)	Signed May 2016	Exh. E to Warr Decl.	N/A	N/A	January 2017
Sulphur (15%)	Signed July 2014	AR002137	Feb. 2015 103 horses removed	AR003230	January 2017
Sulphur	Signed July 2014	AR002137	July 2014 36 horses removed	AR003180	January 2017

E. The Bureau's Removal Efforts In Utah On Private and State Land

In addition to the private and State land removals that resulted from the removal efforts in the nine herd management areas documented above, the Bureau continually attempts, as soon as practicable, to address wild horse concerns from private and State land owners as they arise. With respect to the private lands, this effort is done continually as the Bureau receives phone calls and letters from private landowners.

Private Land Removals Identified in the Administrative Record				
Associated Herd Management Area	Private Land Owner Removal Requestor	Date of Removal	Number of Horses Removed	Cite For Removal Numbers
Bible Springs	Robert Holt – Holt Farms LLC	May 2010	11 horses removed	AR003210

Bible Springs	Fred Woods	July 2010	12 horses removed	AR003211
North Hills	Dave Terry	October 2010	1 horses removed	AR003212
North Hills	Dave Terry	June 2012	6 horses removed	AR003214
Four-Mile	Mackray Wood	January 2012	9 horses removed	AR003215
Bible Springs	Fred Woods/Jared Holt	May 2010	16 horses removed	AR003216
Multiple private land removals or movement of animals off private lands		2013-2016	179 horses moved or removed	Exh. F to Warr Decl.

With respect to the State lands, in February 2016, the Bureau entered into a cooperative settlement agreement with the State of Utah concerning wild horse management activities on lands managed by Utah's School & Institutional Trust Lands Administration. Warr Decl. ¶ 17; Exh. G to Warr Decl. Under this agreement, the Bureau agreed to work cooperatively to manage wild horses on State lands. Warr Decl. ¶ 17. The agencies will meet annually to identify priority removal areas, ensure appropriate environmental review, jointly conduct aerial population surveys, and monitor rangeland resources and improvements. *Id.* The agreement, which is subject to congressional appropriations, places priority on managing herd management areas in the south-central and southwest areas of state. *Id.* However, the agreement also calls for additional efforts in the remainder of the state where other horse challenges arise between State and Bureau. *Id.* Since the agreement, the Bureau has completed the removal of 158 wild horses from the Blawn Wash area. *Id.* Pursuant to the agreement, the Bureau will make reasonable attempts to remove horses on State lands within Blawn Wash and Muddy Creek areas every two years; and, beginning in fiscal year 2017, remove up to 50 horses from State lands on an annual basis. *Id.*

STANDARD OF REVIEW

Because the Wild Horse Act does not contain an independent grant of jurisdiction or cause of action, the Administrative Procedure Act governs judicial review of the

1 Bureau's compliance with the Wild Horse Act. *See In Def. of Animals*, 751 F.3d at 1061.
 2 A failure-to-act claim "under § 706(1) can proceed only where a plaintiff asserts that an
 3 agency failed to take a discrete agency action that it is required to take." *SUWA*, 542 U.S.
 4 at 64. Courts cannot under Section 706(1) compel agencies to comply with "broad
 5 statutory mandates" that are "mandatory as to the object[s] to be achieved" but that leave
 6 agencies with "discretion in deciding how to achieve" those objectives. *Id.* at 66–67; *see*
 7 *also Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 890 (1990). The Administrative
 8 Procedure Act imposes this strict limit on a court's jurisdiction "to protect agencies from
 9 undue judicial interference with their lawful discretion, and to avoid judicial
 10 entanglement in abstract policy disagreements which courts lack both expertise and
 11 information to resolve." *SUWA*, 542 U.S. at 66.

12 Thus, relief under Section 706(1), is "reserved only for the most transparent
 13 violations of a clear duty to act." *In re Bluewater Network*, 234 F.3d 1305, 1315 (D.C.
 14 Cir. 2000); *see also SUWA*, 542 U.S. at 63. Although courts may sometimes compel an
 15 agency to "act within a reasonable time," *Houseton v. Nimmo*, 670 F.2d 1375, 1377 (9th
 16 Cir. 1982), they are "ill-suited to review the order in which an agency conducts its
 17 business" and "hesitant to upset an agency's priorities by ordering it to expedite one
 18 specific action." *Sierra Club v. Thomas*, 828 F.2d 783, 797 (D.C. Cir. 1987). Thus, the
 19 circumstances in which judicial intervention is appropriate are "very limited." *In re Cal.*
 20 *Power Exch. Corp.*, 245 F.3d 1110, 1124 (9th Cir. 2001); *In re Int'l Chem. Workers*
 21 *Union*, 958 F.2d 1144, 1149 (D.C. Cir. 1992) (limiting review of delayed agency action
 22 claims to "extraordinary circumstances").⁶

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 25 ⁶ The crux of Petitioners' case clearly centers on "unreasonable delay" under Section
 26 706(1). Petitioners allude to Section 706(2)(A), but never identify final agency action on
 27 the part of the Bureau. This is a pre-requisite to bringing suit under the Administrative
 28 Procedure Act and the failure to identify final agency action is fatal to any attempted
 claim under this statutory provision. 5 U.S.C. § 704; *Colorado Farm Bureau Federation*
v. U.S. Forest Service, 220 F.3d 1171, 1173-74 (10th Cir. 2000).

ARGUMENT

I. Judicial Management of the Bureau's Wild Horse Program is Improper.

Petitioners first argue that, because the Bureau made overpopulation and removal determinations on each of the nine herd management areas on Federal public lands, the Bureau has a mandatory duty to remove horses under Section 3 of the Wild Horse Act and it has failed to do so. Pet. Br. at 8-48. Petitioners also argue that, because the Bureau has received multiple requests from private and State landowners, it has a mandatory duty under Section 4 of the Act to remove horses and has also failed to comply. *See also* Pet. Br. at 49-52. As their requested relief, Petitioners demand that this Court compel the Bureau to immediately remove horses on Federal public lands to within established appropriate management levels. ECF No. 2 at 20-21. And, with respect to the private and State lands, Petitioners demand that the Court not only compel the Bureau to remove the stray horses but also for the Court to force the Bureau to remove the horses to off-range facilities – *i.e.*, not allow the Bureau to move the horses from private/State lands back onto Federal public lands. *Id.*; *see also* Pet. Br. at 51.

As explained in more detail below, Petitioners' arguments are without merit. At this time, the Bureau has no duty to remove horses on four of the nine areas of Federal public land at issue (Choke Cherry, Muddy Creek, North Hills, and Swasey herd management areas) because removals have already occurred pursuant to the overpopulation and removal determinations. And, in the remaining five areas of Federal public land (Frisco, Blawn Wash, Four Mile, Bible Springs, and Sulphur herd management areas) and the State and private lands at issue, where a duty to remove horses currently exists, the Bureau has diligently worked to remove horses. Petitioners cannot demonstrate that the agency has unreasonably delayed these actions and their demands for relief ultimately – and inappropriately – invite this Court to judicially manage the Bureau's Wild Horse Program. Therefore, the Court should reject Petitioners' petition and deny their requested relief.

A. With Respect to the Federal Public Lands at Issue, No Duty to Remove Horses Exists on the Choke Cherry, Muddy Creek, North Hills, and Swasey Herd Management Areas Because the Bureau Has Not Made the Required Section 3 Removal Determinations.

Petitioners first argue mistakenly that, with respect to the Federal public lands at issue, the Bureau has made overpopulation and removal determinations as required by Section 3 of the Act in and around each of the nine herd management areas. Pet. Br. at 8-48. It is true that the Bureau has made those determinations in five of the nine herd management areas at issue. *See* “Background” Section II.D, above. Those removal determinations are operative and, as further explained below, the Bureau is diligently working to remove horses in those areas. But, contrary to Petitioners’ assertion, the Bureau has not made the required removal determination on the remaining four areas – Choke Cherry, Muddy Creek, North Hills, and Swasey. *See* “Background” Section II.D, above. The removal actions contemplated by and analyzed in the decision documents for the Choke Cherry, Muddy Creek, North Hills, and Swasey areas cited by Petitioners are now complete and no longer operative. *See* Pet. Br. at 17-21 (2010 environmental review for North Hills); 22 (2009 environmental review for Muddy Creek); 23-25 (2012 environmental review for Swasey); 27-29 (2010 environmental review for Choke Cherry); *see also* Warr Decl. ¶ 21. In other words, for the Bureau to remove any additional horses in any of these herd management areas, it must conduct some sort of additional environmental review under the National Environmental Policy Act and make the required removal determinations under the Wild Horse Act. The mandatory duty to remove horses is not triggered until the Bureau makes the removal determination. *See Wyoming*, 2016 WL 5920744, at *4-5.

To the extent that Petitioners argue in response that the Bureau still has a duty to remove horses from these four herd management areas because the current numbers (even after the completed removals) still exceed the maximum appropriate management level, that argument must be rejected consistent with recent and binding Tenth Circuit

precedent. *See Wyoming*, 2016 WL 5920744, at *4-5. The Tenth Circuit held that even where the Bureau has determined that an overpopulation exists, the Wild Horse Act gives the Bureau the discretion to choose the appropriate tools to address that situation. *Id.*; *see also In Def. of Animals*, 751 F.3d at 1060 (noting that the Bureau considered an “alternative that would use only fertility control measures but no herd thinning or relocation”). The Act states that the Bureau has the discretion to determine “whether action should be taken to remove excess animals” and “whether appropriate management levels should be achieved by the removal or destruction of excess animals, or other options (such as sterilization, or natural controls on population levels).” 16 U.S.C. § 1333(b)(1).

The Bureau acknowledges that the horse numbers in these four areas still exceed the appropriate management levels. But, a mandatory duty to remove horses from these four areas will arise only if and when the Bureau, after reviewing the most current information, makes another removal determination concerning these areas. 16 U.S.C. § 1333(b)(1); *Wyoming*, 2016 WL 5920744, at *4-5. Until that time, the Bureau has the discretion to prioritize its horse management actions and decide how best to proceed. Therefore, no mandatory duty to remove exists with respect to these four areas and Petitioners’ claims of unreasonable delay must be rejected. *Id.*; *see also SUWA*, 542 U.S. at 63-64 (explaining that unreasonable delay claims require the identification of a “specific, unequivocal command” that the agency is failing to perform as a “ministerial” matter).⁷

B. Where a Mandatory Duty to Remove Excess Horses Has Been Present on Federal Public, State, and Private Lands, The Bureau’s Actions Have Been Reasonable.

⁷ Even if there were current and operative removal decisions on these four areas (there is not), Petitioners’ unreasonable delay arguments still fail because, as explained below, the Bureau is taking reasonable action to remove horses.

1 The Bureau's Wild Horse Program faces significant challenges. First, the current
2 on-range horse population totals more than 67,000 and is spread across Federal, State,
3 and private lands among 10 western states. This number is more than twice the amount of
4 horses recommended in the Bureau's land use plans covering the western range and, due
5 to rapid reproduction rates, the on-range horse numbers continue to quickly increase.
6 Second, the Bureau has already removed over 165,000 horses from the western range and
7 currently boards approximately 50,000 of these horses in off-range facilities due to
8 decreased market demand for horse sales and adoption. The Bureau estimates a
9 significant cost of over a billion dollars of its budget to board these horses for life. Third,
10 off-range boarding facilities that meet the appropriate criteria are difficult to procure and
11 current facilities are now at or near maximum capacity. *See* "Background" Section II.B,
12 above.

13 For these reasons, removing wild horses from the range is simply not a sustainable
14 management option. The significant – and now fixed – cost of boarding nearly 50,000
15 horses for life combined with limited available boarding space at off-range facilities have
16 severely limited the Bureau's ability to remove additional horses from the western range.
17 In order to bring its Wild Horse Program onto a fiscally and ecologically sustainable
18 path, the Bureau has exercised its broad discretion under the Wild Horse Act to prioritize
19 its remaining available budget in the following order: (1) allocate budget to research and
20 development of technologies that would reduce the on-range horse numbers without the
21 need to physically remove horses and board them for life in off-range facilities; (2)
22 allocate budget to streamline and incentivize the horse adoption program (and other
23 programs) to free up space in the off-range boarding facilities; and (3) allocate budget to
24 remove horses from the most problematic areas within 10 western states. *See*
25 "Background" Section II.C. With this backdrop, the Bureau's work to remove horses and
26 its planned removal work with respect to the areas at issue, *see* "Background" Section
27 II.D & E, have been reasonable.
28

1. Unreasonable delay is determined on a case-by-case basis and is unique in every situation.

Petitioners do not attempt to quantify a period of time that constitutes unreasonable delay but argues nonetheless that this case qualifies. Pet. Br. at 36-52. Contrary to Petitioners' implication, there is no "*per se* rule as to how long is too long to wait for agency action." *In re Core Commc'ns*, 531 F.3d 849, 855 (D.C. Cir. 2008) (citation omitted); *Mashpee Wampanoag Tribal Council v. Norton*, 336 F.3d 1094, 1102 (D.C. Cir. 2003). This is especially true in this case where the Wild Horse Act does not impose any specific statutory deadlines. Rather, courts apply the "*TRAC*" factors to determine, on a case-by-case basis, whether an agency's delay is so egregious as to warrant judicial intervention. *In re Cal. Power*, 245 F.3d at 1124 (citing *Telecomms. Research & Action Ctr. v. FCC*, 750 F.2d 70 (D.C. Cir. 1984) (*TRAC*)); *Forest Guardians v. Babbitt*, 164 F.3d 1261, 1272 (10th Cir. 1998), as amended by 174 F.3d 1178 (10th Cir. 1999) (noting the usefulness of the *TRAC* factors in cases, like the one at hand, where a statute sets a "discretionary time schedule" in which the agency can complete its action). When assessing these factors, a court "must remember that, '[a]bsent a precise statutory timetable or other factors counseling expeditious action, an agency's control over the timetable of a . . . proceeding is entitled to considerable deference.'" *Sierra Club*, 828 F.2d at 797 (citation omitted).

The *TRAC* factors are: "(1) the time agencies take to make decisions must be governed by a 'rule of reason'; (2) where Congress has provided a timetable or other indication of the speed with which it expects the agency to proceed . . . , that statutory scheme may supply content for this rule of reason; (3) delays that might be reasonable in the sphere of economic regulation are less tolerable when human health and welfare are at stake; (4) . . . the effect of expediting delayed action on agency activities of a higher or competing priority; (5) . . . the nature and extent of the interests prejudiced by the delay; and (6) the court need not 'find any impropriety lurking behind agency lassitude in order to hold that agency action is unreasonably delayed.'" *Brower v. Evans*, 257 F.3d 1058,

1 1068 (9th Cir. 2001) (citations omitted). Unreasonable delay is determined on a case-by-
 2 case basis, is unique in every circumstance, and, as explained further below, not present
 3 in this case.

4 **2. The Bureau's actions with respect to Federal public lands on the**
 5 **Frisco, Blawn Wash, Four Mile, Bible Springs, and Sulphur herd**
 6 **management areas have been reasonable.**

7 **a. The pace and timing of the Bureau's removals are discretionary.**

8 The first *TRAC* factor provides that “the time agencies take to make decisions
 9 must be governed by a ‘rule of reason.’” *Brower*, 257 F.3d at 1068. This factor must be
 10 read in concert with the second *TRAC* factor, which states that “where Congress has
 11 provided a timetable or other indication of the speed with which it expects the agency to
 12 proceed . . . , that statutory scheme may supply content for this rule of reason.” *Id.* Here,
 13 the lack of specific statutory deadlines for removal provides context for the Bureau's
 14 removal work, endowing the agency with significant latitude when planning and
 15 executing gathers and removals. This is especially so where, as here, the Wild Horse Act,
 16 while mandating that the removal process begin “immediately” once certain
 17 determinations have been made, also mandates that the removal work be prioritized and
 18 proceed in stages until the removal is complete. *See* 16 U.S.C. § 1333(b)(2).
 19 Additionally, the Act's mandate to “immediately” remove horses must take into account
 20 that removals can take years due to limited resources, competing removal needs across 10
 21 western states, the significant lead time needed to organize a removal, and the fact that
 22 removals cannot happen during certain times of year like winter and foaling season.
 23 Because the Wild Horse Act imposes no specific timetable for removing horses after the
 24 Bureau has made the required removal determinations, especially when taking into
 25 account all the complex and competing factors surrounding removal actions, there has
 26 been no “delay” in this case, much less unreasonable delay.

27 Petitioners' claim that there has been unreasonable delay with respect to these
 28 management areas because the Bureau did not “immediately” remove horses erroneously

presumes that the Bureau was required to remove all excess horses down to the appropriate management levels within a relatively short time, a presumption that is not supported by the Wild Horse Act or any other authority. *See* Pet. Br. at 30-48. Of the five herd management areas with operative overpopulation and removal determinations, the oldest determination was made in May 2014 for the Frisco herd management area. Even assuming that Petitioners' alleged "delay" is measured from May 2014, Petitioners are incorrect that a delay of years – even two years or more – is necessarily unreasonable or unlawful. *Core Commc'ns*, 531 F.3d at 855 (noting no "per se rule as to how long is too long to wait for agency action") (citation omitted). Delays spanning years may be necessary for relief under 5 U.S.C. § 706(1), *In re Cal. Power*, 245 F.3d at 1125-26, but they are not sufficient. *See, e.g., In re United Mine Workers of Am.*, 190 F.3d 545, 546-51 (D.C. Cir. 1999) (eight-year delay did not warrant equitable relief); *Mashpee Wampanoag*, 336 F.3d at 1100-01 (vacating district court's determination that five-year delay was unreasonable); *Grand Canyon Air Tour Coal. v. FAA*, 154 F.3d 455, 477-78 (D.C. Cir. 1998) (declining to order agency action despite 10-year delay in issuing rule and 20-year delay in achieving rule's statutory objective).

Here, Petitioners cannot point to any specific statutory or regulatory deadline for the Bureau to remove excess horses down to an appropriate management level. Those deadlines simply do not exist. Contrary to Petitioners' implications, "[a]bsent a precise statutory timetable or other factors counseling expeditious action, an agency's control over the timetable of a . . . proceeding is entitled to considerable deference." *Sierra Club*, 828 F.2d at 797 (citation omitted). Without a specific statutory timeline to enforce (or at least a regulatory or internal agency deadline to put the question of "delay" into context for the Court), the Bureau's timeline with respect to excess horse removals is entitled to considerable deference.

b. The Bureau's Wild Horse Program is guided by a rule of reason.

As noted, the first *TRAC* factor considers whether "the time agencies take to make decisions" is governed by a "rule of reason." *Brower*, 257 F.3d at 1068. Just as the

1 timing of agency action is *per se* discretionary absent explicit statutory deadlines (or at
 2 least a regulatory or internal agency deadline to put the question of “delay” into context
 3 for the Court), an agency’s rationale for its chosen timing is itself entitled to deference. *In*
 4 *re Pesticide Action Network N. Am.*, 532 Fed. App’x 649, 650-51 (9th Cir. 2013); *In re*
 5 *Cal. Power*, 245 F.3d at 1125-26. Even where courts have compelled agency action
 6 because of some extenuating factor not present in this case (such as the agency’s
 7 noncompliance with prior court orders), they have explicitly refrained from opining on
 8 the wisdom of policy judgments that underscore the pace of agency work. *Core*
 9 *Commc’ns*, 531 F.3d at 859.

10 Consistent with its significant discretion under the Wild Horse Act, the Bureau’s
 11 Wild Horse Program has been guided by a rule of reason. The Bureau’s budget has never
 12 provided sufficient funds to cover the costs of all the competing needs within in its Wild
 13 Horse Program. This has forced the Bureau to prioritize its workload and management
 14 efforts. As explained above, wild horses multiply rapidly with current population
 15 numbers at approximately 67,000 spread across 10 western states, ECF 115-2 at 2-4, and
 16 using its limited wild horse-related funds to conduct removal actions only is not a viable
 17 management strategy. For these reasons, the Bureau, in ordering its priorities with a
 18 limited budget, has decided to take a multi-pronged approach with the goal of obviating
 19 or significantly reducing the need for removal actions and boarding horses in off-range
 20 corrals, freeing up budget for future removal efforts, and addressing the most problematic
 21 areas as needed. Additionally, as explained above, the Bureau has removed horses from
 22 the areas at issue and will continue to do so within its multi-faceted management
 23 approach. *See* “Factual Background” Section D, *supra*. Given the unique circumstances
 24 and challenges facing its Wild Horse Program, the Bureau’s management decisions and
 25 actions have been reasonable.

26 **c. The Bureau’s Wild Horse Program reflects a reasonable allocation**
 27 **of limited agency resources.**
 28

1 The next relevant *TRAC* factor, the fourth factor, considers “the effect of
2 expediting delayed action on agency activities of a higher or competing priority.”
3 *Brower*, 257 F.3d at 1068; *Mashpee Wampanoag*, 336 F.3d at 1102 (noting that the issue
4 of unlawful delay depends “in large part . . . upon . . . the resources available to the
5 agency”). As explained above, the Bureau has exercised its considerable discretion and
6 appropriately prioritized its actions to provide the best chance for a long-term solution.

7 Dissatisfied with the Bureau’s prioritization and reasoning, the State of Utah (and
8 Petitioners to a certain extent) argues mistakenly that the Bureau’s lack of budget to
9 undertake the removals the State desires is the product of the Bureau’s own budget
10 requests. ECF No. 115 at 12-15. The State of Utah even suggests that the Bureau need
11 only ask for additional funding, and then the funds would be appropriated. *Id.* This
12 argument, however, is speculative and overly simplistic. As a practical matter, the
13 Bureau’s annual wild horse-related budget request is only one piece of a much larger
14 budgetary puzzle. As relevant here, Bureau budget requests are the product of a careful
15 priority-setting process based on, among other things, historical funding levels and other
16 wild horse-related commitments made by the President, the Secretary, and the Bureau’s
17 Director. Because these agency funding requests are impacted by numerous factors, the
18 Bureau’s wild horse-related budget request cannot simply be raised unilaterally, as the
19 State of Utah suggests.

20 In any event, the Bureau does not argue that these budgetary constraints relieve the
21 agency of its duties under the Wild Horse Act, but rather that these constraints are among
22 many factors that must be considered in exercising its discretion to prioritize actions
23 within its Wild Horse Program. Any argument by Petitioners or the Amicus parties that
24 the Bureau cannot rely on budgetary constraints in setting its wild horse priorities is
25 inconsistent with the Wild Horse Act, which implies that the Bureau does not have
26 unlimited resources. 16 U.S.C. §1333(b)(2) (authorizing the Bureau to set priorities).
27 Indeed, if such constraints were irrelevant, there would be no need for Section 3(b)(2) of
28 the Wild Horse Act, which reflects the reality that the Bureau must prioritize its actions

1 within the budgetary constraints imposed by Congress. *See* 31 U.S.C. §1341(a)(1)(A)
 2 (stating an agency cannot make or authorize an expenditure exceeding the appropriation).
 3 Thus, the Bureau's consideration of these budgetary constraints was not only appropriate,
 4 it was essential in prioritizing its wild horse actions to develop a long-term solution to the
 5 growing horse numbers and to be able to address the most pressing needs at any given
 6 time among 10 western states all experiencing wild horse problems. The Bureau has
 7 reasonably allocated and prioritized limited agency resources.

8 **d. There is no prejudice to warrant judicial intervention in the**
 9 **Bureau's Wild Horse Program.**

10 The last *TRAC* factor relevant to this case examines the nature and extent of the
 11 interests prejudiced by an alleged delay. *Brower*, 257 F.3d at 1068. Contrary to
 12 Petitioners' assertion, *see* Pet. Br. at 30-48, the Bureau's decisions and prioritization in
 13 executing its Wild Horse Program does not unduly prejudice Petitioners. First, the Bureau
 14 must spread its limited wild horse-related funds among 10 western states. Second, forcing
 15 the Bureau to make Utah a higher priority takes time, resources, and budget away from
 16 the Bureau's efforts to pursue other horse management efforts that are likely to not only
 17 free up the budget to conduct more removals in the future but to possibly obviate or
 18 significantly reduce the need for future removal efforts. *See* Warr Decl. ¶ 19. In short,
 19 giving Utah a higher priority in the Bureau's Wild Horse Program not only is unfair to
 20 the other states with wild horse problems but will ultimately prejudice Utah in the long
 21 run by delaying research and development of technology that would be more effective in
 22 keeping horses populations within appropriate management levels without the need for
 23 removals. There is simply no undue prejudice to Petitioners under these circumstances
 24 and their argument must fail.

25 In sum, Petitioners fail to demonstrate a claim for unreasonable delay with respect
 26 to the five herd management areas for which the Bureau has made operative removal
 27 determinations. As explained above, there is no specific statutory deadline for the
 28 completion of removal actions, the Bureau's delay in conducting those removal actions is

1 reasonable, and there are good reasons for the priorities the Bureau has set. After a fair
 2 consideration of these unique circumstances, *see Core Commc'ns*, 531 F.3d at 855, the
 3 Bureau's wild-horse decisions and priorities are reasonable and entitled to deference.
 4 Petitioners' request that the Court usurp control of the Bureau's Wild Horse Program is
 5 inappropriate, unwarranted, and should be rejected.

6 **3. Where a Mandatory Duty to Remove Excess Horses Has Been Present**
 7 **on Private and State Lands Under Section 4, The Bureau's Actions**
 8 **Have Been Reasonable.**

9 Petitioners next argue that the Bureau has unreasonably delayed the removal of
 10 horses under Section 4 of the Act from several parcels of private land and land owned by
 11 the State of Utah School & Institutional Trust Lands Administration. Pet. Br. at 49-52.
 12 Like the unreasonable delay claims concerning the Federal public lands, Petitioners' State
 13 and private land claims also fail under a *TRAC* factor analysis.

14 With respect to the first *TRAC* factor, the statute does not provide a specific
 15 statutory deadline for horse removal from non-federal lands. Like Section 3 discussed
 16 above, Section 4 of the Wild Horse Act also grants the Bureau the discretion to set the
 17 timing and pace of horse removals. The Act only states that after receiving the
 18 appropriate notice from private landowners, the Bureau "shall *arrange* to have the
 19 animals removed." 16 U.S.C. § 1334 (emphasis added). The Bureau's horse removal
 20 regulations, 43 C.F.R. § 4720.2-1, further clarify that horse removals from these areas are
 21 to occur "*as soon as practicable*." (emphasis added). While a reasonable reading suggests
 22 that the Bureau has a duty to eventually remove the wild horses when requested pursuant
 23 to Section 4, there can be no dispute that the statutory language requires the Bureau to
 24 only make arrangements. The term "arrange" itself evidences clear Congressional intent
 25 to provide the Bureau with the utmost discretion to comply with the difficult task of
 26 entering private lands and gathering wild horses throughout a multitude of geographical
 27 locations and conditions. And the regulatory language leaves the timing of removal to
 28 whenever it is "practicable" for the agency.

1 With respect to the remaining relevant *TRAC* factors, the Bureau’s approach with
 2 the private and State lands has been reasonable. As discussed above, see “Factual
 3 Background” Section E, the Bureau, even with the significant challenges facing its Wild
 4 Horse Program, has diligently worked to remove horses from the private and State lands
 5 at issue in this case. The Bureau continually addresses wild horse concerns from private
 6 land owners as they arise on a regular basis. It has been documented that just since 2010,
 7 the Bureau has removed numerous horses from the private lands and, depending on
 8 available boarding space at off-range facilities, has removed horses from the range or
 9 hazed them from private/State lands back onto Federal public lands. *Id.* Additionally, in
 10 February 2016, the Bureau entered into a settlement agreement with the State of Utah
 11 concerning wild horse issues on State lands. Warr Decl. ¶ 17; Exh. G to Warr Decl.
 12 Under this agreement, the Bureau has agreed to work cooperatively with the State of
 13 Utah to manage wild horses on State lands. Warr Decl. ¶ 17. The Bureau has already
 14 removed horses from State lands pursuant to the agreement and will continue to do so
 15 subject to congressional appropriations. *Id.* The Bureau has been diligent in its removal
 16 efforts with respect to the private and State lands at issue and, given the unique and
 17 challenging circumstance with horse management, its actions have been reasonable.
 18 Petitioners’ claims of unreasonable delay should be rejected.

19 CONCLUSION

20 Petitioners ask this Court to force the Bureau to move the Federal public, State,
 21 and private lands most important to Petitioners to the front of the line – irrespective of the
 22 Bureau’s higher priorities (that ultimately aim to significantly reduce the need for future
 23 removals) or the more urgent and pressing needs of the other western states facing similar
 24 problems. But Petitioners provide no basis to justify their extraordinary demands. As
 25 explained above, the Bureau had no duty to remove horses on Choke Cherry, Muddy
 26 Creek, North Hills, and Swasey herd management areas on Federal public land. And, in
 27 the instances where it did have a duty to remove horses from Federal public, State, and
 28 private lands, the Bureau has and continues to appropriately exercise its discretion in the

1 timing, pace, and methods of removal. Given the challenges facing its Wild Horse
2 Program and its management priorities, the Bureau has reasonably acted to remove
3 horses from the areas where a duty to remove exists. Therefore, the Court should reject
4 Petitioners' inappropriate invitation to usurp control of the Bureau's Wild Horse Program
5 and deny their requested relief.

6
7 Dated: October 28, 2016

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